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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 302

ARTHUR ST. JOHN, CHESTER WALCZAK, AL FUHRMAN, ET AL., ETC.,

Appellants,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, J. E. FITZGIBBON AND HENRY C. RULE, INDIVIDUALLY, ETC., ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

J. G. HARDGROVE,
VERNON A. SWANSON,
Counsel for Appellee,
Milwaukee Gas Light Company.

MILLER, MACK & FAIRCHILD,
Of Counsel.

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STATUTE CITED

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 4844

ARTHUR ST. JOHN, CHESTER WALCZAK, AL FUHRMAN, GORDON DONNELLY, EMIL HEIMSCH, THOMAS LANSING, JOHN F. SHEEHAN, E. F. REGNER, EDWARD P. REGAN, LA MOINE S. CARDINAL, INDIVIDUALLY, AND AS OFFICERS OF LOCAL 18, UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA, AFFILIATED WITH THE CONGRESS OF INDUSTRIAL ORGANIZATIONS, AND LOCAL 18, UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA (CIO),

Plaintiffs,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, J. E. FITZGIBBON AND HENRY C. RULE, INDIVIDUALLY, AND AS COMMISSIONERS CONSTITUTING THE WISCONSIN EMPLOYMENT RELATIONS BOARD, AND THOMAS E. FAIRCHILD, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF WISCONSIN, AND THE MILWAUKEE GAS LIGHT COMPANY, A WISCONSIN CORPORATION,

Defendants

STATEMENT OPPOSING JURISDICTION AND MOTION TO AFFIRM OR DISMISS SUBMITTED BY APPELLEE MILWAUKEE GAS LIGHT COMPANY.

The appellee Milwaukee Gas Light Company, believing that the matters set forth below will demonstrate the

lack of substance of the questions raised by this appeal, files this, its statement in opposition to the appellants' statement as to jurisdiction.

This appellee includes herein its motion to dismiss the appeal, or, in the alternative, to affirm the judgment of the District Court on the ground that the questions raised on behalf of the appellants are so unsubstantial as not to need further argument.

While the cause is one which otherwise would be reviewable by the Supreme Court on direct appeal from the District Court, this appellee asserts that the unsubstantial character of the grounds stated by the appellants is so apparent on the face of the record as to warrant the court in summarily disposing of the appeal at this stage of the proceedings under Rule 12, paragraph 3.

The matters relied upon by this appellee are more particularly stated below:

The Correctness of the Ruling of the District Court on Res Judicata Presents No Substantial Question

The record shows that all of the issues presented to the District Court had been disposed of in an action previously brought and prosecuted by the appellants in a state court. The appellants were simply seeking a new judgment in a new forum.

We submit that "the objections taken to the decree below are so unsubstantial that the motion to affirm without oral argument should be sustained."

Grubb v. *Public Utilities Comm.*, 281 U. S. 470, at 479, 50 S.Ct. 374, 74 L. Ed. 972.

Appellants' Statement as to Jurisdiction Discloses No Appellate Court Question Which Is Substantial

In their statement as to jurisdiction, the appellants say that the questions presented are (1) whether the state court judgment is *res judicata;* (2) whether the statute involved violates the 13th and 14th Amendments to the Constitution of the United States; and (3) whether the statute is in conflict with the Labor Management Relations Act of 1947.

The second and third of these would present substantial questions in a trial court, and in this court as well if properly before the court. But they will never be reached if the first is answered in the affirmative, and as to that, we submit that the record leaves no room for argument.

When appellants come to their statement that "The Questions are Substantial," they fail to distinguish between what might be substantial questions in a court of first instance, and what questions presented to this court on appeal are substantial.

The amended complaint in the action at bar opens with this statement:

"1. This is a suit of a civil nature seeking an injunction *and a declaratory judgment*, and arises under the Constitution of and the laws of the United States." (Amended Complaint, paragraph 1.)

The injunction sought is *a permanent injunction enjoining and restraining the enforcement of Subchapter III of Chapter 111, Wisconsin Statutes of 1947*, sometimes referred to as the Public Utility Anti-Strike Law. (Paragraph (d) of the prayer of Amended Complaint.)

The declaratory judgment sought is *one declaring the act invalid.* (Paragraph (e) of the prayer of Amended Complaint.)

The defendants (appellees) in addition to putting in issue the allegations of the amended complaint, pleaded that the plaintiffs, prior to the commencement of the action at bar, chose as their forum for the litigation of the same issues the Circuit Court for Milwaukee County, Wisconsin, in an action in which a judgment was entered declaring the statute valid, and denying the relief sought in all other respects. (Copies of the amended complaint in the state court action are attached as Exhibits A and B respectively to the answers of the Milwaukee Gas Light Company and of the State Official defendants.)

The issues, including the issue as to whether the judgment in a former action in the state court was *res judicata*, were submitted to the district court on the pleadings and an agreed statement of facts. (See second stipulation.)

The case was heard before a three-judge court, U. S. Circuit Judge F. Ryan Duffy and U. S. District Judges Patrick T. Stone and Robert E. Tehan sitting. The majority opinion, by Circuit Judge Duffy, was filed on April 28, 1950 (*St. John* v. *Wisconsin Employment Relations Board*, 90 F. Supp. 347—Advance Sheets). Judge Tehan filed a dissenting opinion on the same day (90 F. Supp. 352).

Findings based on the agreed statement of facts were signed by Judges Duffy and Stone on June 14, 1950. Judge Tehan dissented. Judgment was entered on June 14, 1950.

The majority opinion is so simply and clearly written that we were tempted to submit this objection and motion on that alone.

The decision of the Wisconsin Supreme Court affirming the judgment in the state court suit was rendered on July 12, 1949, and is reported under the following title:

United G., C. & C. Workers v. *Wis. E. R. Board*, 255 Wis. 154, 38 N. W. (2d) 692.

Any doubt as to the finality of that decision, so far as the constitutionality of the statute is concerned, was removed by a decision in another case rendered on May 2, 1950, after the decision of the District Court in the case at bar, and before the findings were filed and the judgment entered.

Wisconsin E. R. Board v. *Amalgamated Asso.*, 257 Wis. 43.

In that case the court said at page 52 (Advance Sheets):

> "Since we have held in *United G., C. & C. Workers v. Wisconsin E. R. Board*, 255 Wis. 154, 38 N. W. (2d) 692, and do now hold the statute to be constitutional, the final contention of the defendants that the several sections thereof are not severable need not be determined."

The Case Is Moot Except as to the Prayer for Declaratory Relief, and, as to That, the Plea of Res Judicata Is Conclusive.

It is stated in the amended complaint that this is a suit of a civil nature seeking (1) an injunction, and (2) a declaratory judgment. *The injunction sought* is a permanent injunction enjoining and restraining the enforcement of Subchapter III of Chapter 111, Wisconsin Statutes of 1947, sometimes referred to as Chapter 414, Laws of 1947. *The declaratory* judgment sought is one declaring the act invalid.

The defendants, in addition to putting in issue the allegations of the complaint, pleaded that the plaintiffs, prior to the commencement of the action at bar, chose as their forum for the litigation of the same issues the circuit court for Milwaukee County in an action in which *a judgment was entered on January 6, 1949, declaring the statute valid and denying the relief sought in all other respects.*

That judgment was affirmed by the Supreme Court of Wisconsin on July 12, 1949. (*United G., C. & C. Workers* v. *Wis. E. R. Board*, 255 Wis. 154, 38 N.W. (2d) 692.)

The prayer for relief in the amended complaint *in the state court action* reads:

> "Wherefore, plaintiff prays that the court determine and declare the rights of the parties, and declare Subchapter III of Chapter 111 of the Laws of 1947, Wisconsin Statutes, unconstitutional and invalid, and give such further relief as may be lawful, just and proper, by way of declaration of the rights of the parties."

Subdivision (e) of the prayer for relief in the amended complaint in the action at bar reads:

> "(e) This court issue a judgment declaring that the provisions of sub-chapter 3, Chapter 111 of the Wisconsin Statutes of 1947, insofar as they may be applied to penalize these plaintiffs and others for whom they are authorized to act, to compel them to submit to arbitration on any negotiable issue or which has for its purpose the punishment of the plaintiffs for having left their place of employment in concert or in agreement with others, or for having picketed the defendant company's premises, are void, illegal, unenforceable and repugnant to the United States Labor-Management Relations Act of 1947, and to the Constitution of the United States."

The granting of subdivision (e) of the prayer of the amended complaint in this action is a condition precedent to the granting of any relief to the plaintiffs.

A comparison of the amended complaints in the state court action and in the action at bar shows that the issues were the same except for the fact that a strike actually occurred; that the Board commenced an action in the Circuit Court for Milwaukee County, Wisconsin to enjoin

the strike, and procured a temporary injunction against the strike; that the strike was called off; and that the parties agreed on all the matters in dispute except for a pension plan; and that no impasse or stalemate had occurred in reference to that pension plan up to the time of the entry of judgment.

These facts will appear upon an examination of (1) the amended complaint in the action at bar, and (2) the second amended stipulation which was filed on December 16, 1949. A brief reference will be made to these sources.

It was stated in the amended complaint that the most recent of the contracts was entered into between the plaintiff Union and the defendant Company on September 24, 1948, which by its terms remained in full force and effect until June 1, 1949, and from year to year thereafter until terminated by written notice on or before April 1 of any year; that the plaintiff Union terminated the agreement as of June 1, 1949 (par. 22); that negotiations for a new contract continued up to October 4, 1949 (pars. 25 and 26); and on October 4, 1949 the plaintiffs left the employment of the defendant Company "individually, in concert, and in agreement with others, and commenced to peacefully picket the Company premises" (par. 27); that the Board secured an injunction from the Circuit Court for Milwaukee County restraining the plaintiffs "from leaving their place of employment in concert or in agreement with others, and from picketing or otherwise violating" the provisions of the statute (par. 28); that on October 6, 1949, the plaintiff Union and the defendant Company agreed upon wages, hours and other conditions of employment, but had not agreed on the exact terms and conditions of the pension plan; and "that the defendant Company threatens to invoke Section 111.55 and other provisions of Sub-Chapter III, Chapter 111, Wisconsin Statutes of 1947, to compel the plaintiffs to agree to a pension

plan as may be determined by a board of arbitrators provided for in said statutes" (par. 31).

These same matters are dealt with in the second stipulation, on which the case was submitted to the court, from which it appears that the contract of September 24, 1948 is covered in paragraph 19, the negotiations in paragraph 23, the strike in paragraph 30, and the state court action to enjoin the strike, in which a temporary injunction was issued on October 5, 1949, in paragraph 31.

Then follow paragraphs 32, 33 and 34, which read as follows:

> "32. That each party stipulates for himself that he has no present knowledge that subchapter 3 of ch. 111, Wisconsin Statutes, is being violated by the plaintiffs, or the defendant company, at the date of this stipulation. Should such violation occur in the future, the attorney general would perform such duties as are imposed upon him by the Wisconsin Statutes if so required by the Wisconsin Employment Relations Board.
>
> "33. That on October 6, 1949, plaintiff union and the defendant company agreed upon wages, hours and other conditions of employment but have not agreed on the exact terms and conditions of the pension plan for the employees of the defendant company for whom the plaintiff union is authorized to bargain. Disagreement on said pension plan was one of the principal issues in dispute on October 5 when the strike took place. If an impasse or stalemate should arise in negotiations between the company and the union with reference to a pension plan, the company will request the Wisconsin Employment Relations Board to perform its duties under subchapter 3, chapter 111, Wisconsin Statutes.
>
> "34. If an impasse or stalemate is reached in said negotiations, the Wisconsin Employment Relations Board will take steps pursuant to subchapter 3,

chapter 111, Wisconsin Statutes, to effect a settlement through conciliation or a determination through arbitration, as the case may be, and would take such steps as are authorized and as it would deem necessary to prevent or stop a violation of said subchapter by the defendant company or its employees, including plaintiffs."

It thus appears that the strike called on October 5, 1949 (second stipulation, pars. 30 and 33) was abandoned, and it does not appear that any impasse or stalemate arose in the negotiations with reference to a pension plan up to the time of the entry of judgment.

Plaintiffs in No Position to Demand Issuance of an Injunction, Either Temporary or Permanent, at the Date of the Entry of Judgment.

It now becomes our duty to suggest to the court that in truth and in fact a contract disposing of all matters in dispute between the parties, except for a certain pension plan, was entered into on October 6, 1949, which remained in force until June 1, 1950. At that time said contract was opened for negotiations, which negotiations are still in progress.

On August 14, 1950, a contract was entered into between the parties embodying a pension plan, which by its terms is to remain in effect until midnight of December 31, 1952, and that either party may request renegotiation of the provisions of that plan on and after December 1952.

By reason of these negotiations and contracts, the plaintiffs were no longer in a position to demand the issuance of an injunction, either temporary or permanent, at the date of the entry of the judgment herein.

While this does not militate against any right on the part of the plaintiffs to a declaratory judgment, it does

establish that the plaintiffs are no longer in a position to claim that the judgment of June 14, 1950 in fact operates to grant or deny an interlocutory or permanent injunction in any civil action within the meaning of Section 1253.

No review of a judgment for declaratory relief can be had on an appeal under this statute. For that reason, we submit that the appeal should be dismissed.

If, however, the view should be taken that this would not warrant a dismissal of the appeal, then we submit that the judgment should be affirmed for the reason that any claim that the state court judgment was not *res judicata* does not call for further argument.

We, of course, have in mind that the statements just made with respect to these negotiations and contracts do not appear in the record, except in part and by implication. As an appeal has been allowed, we are not in a position to present them to the District Court. The suggestion here made is analogous to the suggestion of a satisfaction of a judgment in an action for the recovery of money.

If the Appeal Be Not Dismissed, the Judgment Should Be Affirmed

The only issue remaining in this case had already been disposed of by the judgment of the state court. The proceedings in the state court action are pleaded in paragraph 22 of the answer of the Milwaukee Gas Light Company, and are supplemented by copies of the amended complaint and of the judgment in the state court action which are attached as exhibits to that answer.

The scope of the issues is also indicated in the decision filed in the circuit court action.

Omitting the recitals and the signature, the judgment entered in the circuit court action on January 6, 1949 reads as follows:

> "IT IS HEREBY ADJUDGED AND DETERMINED that Chapter 414, Laws of 1947, being Subchapter III of Chapter 111 of the Wisconsin Statutes, 1947, is a valid and constitutional act and does not violate nor conflict with any of the provisions of the Constitution of the State of Wisconsin, nor with any of the provisions of the Constitution of the United States, nor with any amendment thereto, and does not conflict with the United States Labor-Management Relations Act of 1947, and does not deny to the plaintiffs nor to any of the employees of the defendant Milwaukee Gas Light Company represented by them, and does not deprive them of, any rights, privileges or protection secured to them under either of said constitutions or said act of Congress; and that the plaintiffs, the defendant Milwaukee Gas Light Company, and its employees represented by the plaintiffs herein, are subject to and controlled by said Subchapter III of Chapter 111 of the Wisconsin Statutes, 1947.
>
> "IT IS FURTHER ADJUDGED that the prayer of the plaintiffs in the above entitled action for further relief be and the same hereby is denied."

If that action had been commenced in the District Court, and that judgment had been entered, we submit that the District Court would not entertain the action at bar. It was properly dismissed for the reason that the issues had already been adjudicated.

The only difference in the situation presented in the court below was that the former judgment had been entered in the Circuit Court for Milwaukee County, in the State of Wisconsin. That is a court of general jurisdiction. The District Court had no broader jurisdiction.

That jurisdiction in Wisconsin is vested by the constitution of that state; and the Legislature is powerless to restrict it.

An appeal was taken from that judgment to the Supreme Court of the State of Wisconsin. That court affirmed the judgment. The decision of the Wisconsin Supreme Court was a final judgment; and if any federal question could have been presented, it was subject to review by this court. No such review was sought; and the decision is just as final and conclusive as if it had been presented to and affirmed by this court.

The Circuit Court for Milwaukee County disposed of the case by a judgment. The full text of that judgment is pleaded in the Milwaukee Gas Light Company's answer to the amended complaint (Gas Light Company answer, par. 22 (h) and Ex. B). The appeal was from the judgment. The Supreme Court of Wisconsin was empowered to reverse, affirm or modify. It neither reversed nor modified. It affirmed without qualification. Where the judgment is simply affirmed, the clerk of the Supreme Court does not transmit with the papers returned to the Circuit Court a copy of the opinion of the Supreme Court.

See Section 274.35, Wis. Stats. 1947:

> "274.35. REVERSAL, AFFIRMANCE OR MODIFICATION OF JUDGMENT; HOW REMITTED, CLERK'S FEES. (1) Upon an appeal from a judgment or order or upon a writ of error the supreme court may reverse, affirm or modify the judgment or order, and as to any or all of the parties; and may order a new trial; and if the appeal is from a part of a judgment or order may reverse, affirm or modify as to the part appealed from. In all cases the supreme court shall remit its judgment or decision to the court below and thereupon the court below shall proceed in accordance therewith.
>
> "(2) The clerk of the supreme court shall remit to such court the papers transmitted to the supreme

court on the appeal or writ of error, together with the judgment or decision of the supreme court thereon, within sixty days after the same is made, unless there is a motion for a rehearing. In case a motion for a rehearing is denied the papers shall be transmitted within twenty days after such denial.

"(3) The clerk of the supreme court shall, except when the order or judgment is affirmed, also transmit with the papers so returned by him a certified copy of the opinion of the supreme court, and his fees for such copy shall be taxed with his other fees in the case."

Of course, the District Court could take notice of the opinion of the State Supreme Court. But the fact remains that that opinion did not become part of the judgment roll. It is the judgment of the Circuit Court that we pleaded as *res judicata,* and that judgment stands without any modification.

In their statement on jurisdiction, appellees argue as though we had nothing but an *order* sustaining a demurrer. This case was not so disposed of. The Circuit Court entered a judgment. In Wisconsin, a trial court, on sustaining a demurrer, is not required to grant leave to plead over. The trial court may, if of the opinion that pleading over would be useless, enter a judgment, and that is precisely what the court did here. The court entered an order sustaining the demurrers and directing "that judgment be entered declaring the rights of the parties, and denying the prayer of the plaintiffs for further relief" (second stipulation, par. 41). That was followed up by a judgment (second stipulation, par. 42). The judgment of the Supreme Court of Wisconsin was not a judgment that the *order* sustaining the demurrers be affirmed, but was that, "on consideration of the appeal, it was ordered and adjudged by said supreme court that the *judgment*

of said circuit court of Milwaukee County be and the same was affirmed" (second stipulation, par. 43).

The Supreme Court describes the matter as an appeal "from a judgment of the Circuit Court * * * " (*United G., C. & C. Workers* v. *Wis. E. R. Board,* 255 Wis. 154, at 156.)

It is an established practice in Wisconsin that the court, "after the decision of a demurrer in the exercise of its discretion in a proper case, may refuse to countenance further proceedings on the part of a defeated pleader." (*Chris. Schroeder & Sons Co.* v. *Lincoln County,* 244 Wis. 178, at 182.)

In other words, the Circuit Court entered an order sustaining the demurrers and directing the entry of judgment, and followed that with the judgment. There was no request for leave to plead over. There was no challenge and no objection either in the Circuit Court or in the Supreme Court to the action of the Circuit Court in the proceeding to judgment.

That every issue in this action was fully litigated in the state court action is indicated by the following statement in the decision of the trial judge therein:

> "Plaintiff contends:
>
> "1. That Chap. 414, Laws of 1947, violates the 'due process of law' and the 'equal protection of the laws' provisions of the XIV Amendment to the Constitution of the United States.
>
> "2. That it likewise violates the 13th Amendment in that it imposes 'involuntary servitude' upon the plaintiffs.
>
> "3. That it impairs the obligations of contract, contrary to Sec. 10 of Article I.
>
> "4. That it constitutes an unlawful delegation of legislation, executive and judicial powers, contrary to the constitution of Wisconsin.

"5. That it violates Article VII, Section 16, Wisconsin Constitution 'in that it establishes a tribunal of conciliation with the power to render binding judgment on the parties without the agreement of both parties'.

"6. That it is violative of Article XIII, Sec. 9, Wisconsin Constitution, 'relating to the way and method of appointment of officers of the state.'

"7. That the law is in conflict with the National Labor Relations Act, as presently amended (known as the Taft-Hartley Act)."

Had there been no declaratory relief statute, the defendants could have maintained an action for substantially the same relief.

It has been held competent for a court of equity to entertain an action commenced by a person specially interested against administrative officers to enjoin them from executing a law on the ground of its being unconstitutional, when such person would be irremediably damaged.

Wadhams Oil Co. v. *Tracy,* 141 Wis. 150, 123 N. W. 785.

The Supreme Court of Wisconsin in 1936 held that it would entertain a suit for declaratory relief to determine the validity of certain acts of the legislature; and that its power to entertain the suit would not come from the act; but that the act merely authorized the court to take jurisdiction at an earlier point in time than it would do under ordinary remedial rules and procedure.

In re Petition of State ex rel. Attorney General, and others, 220 Wis. 25, 264 N. W. 633.

In *Morris* v. *Ellis,* 221 Wis. 307, 266 N. W. 921, the same court entertained a suit for declaratory relief against a light and water commission and a village. It was there

pointed out that the action or declaratory relief is essentially equitable in character, and that a court of equity has power to retain jurisdiction to give complete and effectual relief.

The reasons for sustaining the defense of *res judicata* are stated very simply and directly in the majority opinion by Circuit Judge Duffy.

> *St. John* v. *Wisconsin Employment Relations Board*, 90 F. Supp. 347.

It is submitted that that reasoning is conclusive.

District Judge Tehan, in his dissenting opinion, said:

> "If the Supreme Court had merely affirmed without opinion there would be no dissent, and if the Supreme Court's opinion had discussed only one of the constitutional questions and remained silent on the other questions raised by plaintiffs, we would have reluctantly concurred." (90 F. Supp. 353.)

On May 2, 1950, the Supreme Court of Wisconsin, in an action arising out of a dispute between The Milwaukee Electric Railway & Transport Company and its union said:

> "Since we have held in *United G., C. & C. Workers v. Wisconsin E. R. Board*, 255 Wis. 154, 38 N. W. (2d) 692, and do now hold the statute to be constitutional, the final contention of the defendants that the several sections thereof are not severable need not be determined." (257 Wis. 52 (Advance Sheets).)

The motion for rehearing pending in that case at the date of the entry of the judgment in the case at bar has since been denied. (Advance Sheets, No. 5, 257 Wis., published August 18, 1950.)

Because of the facts hereinbefore reviewed, there can be no question but that the state court passed on every

issue upon which the appellants could rely if there had been no previous decision.

Federal courts are required to give full faith and credit to judgments of state courts.

Davis v. *Davis*, 305 U. S. 32, 39-40, 59 S. Ct. 3, 83 L. Ed. 26, 118 A. L. R. 1518.

The doctrine of *res judicata* applies in Wisconsin.

Reinkey v. *Wilkins*, 172 Wis. 515, 520, 179 N. W. 751.

The doctrine of estoppel by record prevents a party, not only from litigating again what was actually litigated in the former case, but from litigating what might have been litigated therein.

Kuchenreuther v. *Chicago, M., St. P. & P. R. Co.*, 225 Wis. 613, at 615, 275 N. W. 457.

The final adjudication is conclusive, in a subsequent action between the same parties, as to all matters which were litigated or which might have been litigated in the former proceedings.

Werner v. *Reimer*, 255 Wis. 386, at 403, 39 N. W. (2d) 457.

It is not necessary to rely merely on the full faith and credit clause of the United States Constitution. On general principles of *res judicata*, the District Court was bound by the judgment of the state court.

Angel v. *Bullington*, 330 U. S. 183, at pp. 192-193, 67 S. Ct. at p. 662, 91 L. Ed. 832;

Treinies v. *Sunshine Mining Co., et al.*, 308 U. S. 66, 75-78, 60 S. Ct. 44, 84 L. Ed. 85;

American Surety Co. v. *Baldwin*, 287 U. S. 156, 53 S. Ct. 98, 77 L. Ed. 231.

A prior judgment is a finality as to the claim or demand in controversy, concluding the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.

Fishgold v. *Sullivan Drydock & Repair Corp.*, 328 U. S. 275, 282, 66 S. Ct. 1105, 90 L. Ed. 1231, 1239;
Grubb v. *Public Utilities Comm.*, 281 U. S. 470, at 479, 50 S. Ct. 374, 74 L. Ed. 972.

And whether a particular issue was actually litigated is immaterial in view of the necessary conclusion that there was full opportunity to litigate it and that it was adjudicated by the decree.

Jackson v. *Irving Trust Co.*, 311 U. S. 494, 503, 61 S. Ct. 326, 85 L. Ed. 297, 302.

This is a field in which the doctrine of *res judicata* should have the most complete operation. If a judgment in an action for declaratory relief is not *res judicata* as between the parties, the statute providing therefor is an empty gesture.

Moreover, if a judgment in a class action is not *res judicata* as to the persons represented by a party or parties authorized to sue or defend and actually suing or defending in their behalf, then no such action ought to be permitted.

All that remains for consideration is whether, in view of the previous decisions on the application of that doctrine in this court, the objections taken to the judgment below are so unsubstantial that the motion to affirm without awaiting oral argument should be sustained.

Grubb v. *Publc Utilities Comm.*, 281 U. S. 470, 50 S. Ct. 374, 74 L. Ed. 972.

The arguments urged on this appeal for a reversal of the judgment have been so plainly foreclosed by decisions of this court as to make further argument unnecessary.

Missouri P. R. Co. v. *Castle,* 224 U. S. 541, 544, 32 S. Ct. 606, 56 L. Ed. 875, 878;

Chicago, R. I. & P. R. Co. v. *Devine,* 239 U. S. 52, 54, 36 S. Ct. 27, 60 L. Ed. 141, 142;

Boston v. *Jackson,* 260 U. S. 309, 314, 43 S. Ct. 129, 67 L. Ed. 274, 282;

American Surety Co. v. *Baldwin,* 287 U. S. 156, 165, 53 S. Ct. 98, 77 L. Ed. 231, 237.

We have not argued the questions upon which the court would have had occasion to pass if the case were not ruled by the doctrine of *res judicata.* We realize that if those were properly before this court, they could not be regarded as being so wanting in substance as not to need further argument.

MOTION TO DISMISS OR AFFIRM

WHEREFORE this appellee respectfully submits this statement showing that the questions upon which the decision in this case depends are so unsubstantial as not to need further argument; and this appellee respectfully moves the court to dismiss this appeal, or, in the alternative, to affirm the judgment entered below.

Dated August 23, 1950.

J. G. HARDGROVE,
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